In the Supreme Court of the United States

OCTOBER TERM, 1949

NO. 12, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR JUDGMENT

Comes now the United States of America, by its Attorney General and its Solicitor General, and, reserving the right to trial on any issues of fact which cannot be resolved by judicial notice, moves the Court for judgment as prayed in the Complaint, for the reason that the purported defenses set forth in the Answer filed herein by the State of Louisiana are insufficient in law.

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1949.

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STATEMENT WITH RESPECT TO MOTION

The State of Louisiana has filed an Answer consisting of four purported defenses, two of which appear to be directed to the allegations of the Complaint and two of which are described as Affirmative Defenses:

> As a *First Defense,* the State suggests that there is no case or controversy between the parties, that the Court has no jurisdiction in equity over the matter, and that the Complaint fails to state a claim upon which relief can be granted.
>
> As a *Second Defense,* it is admitted that the State claims to be the owner in fee simple of the lands described in the Complaint; that it has, by general law, authorized the leasing of said lands; that it has negotiated and executed leases for the development of petroleum products located therein; that wells which are producing petroleum substances have been drilled in such lands; and that neither the State nor any of its lessees has paid to the United States the value of such petroleum products or any royalties thereon. The State denies, however, that its claim of title and the activities of its lessees constitute an interference with the powers of the United States over the area in question.
>
> As a *First Affirmative Defense,* it is alleged that by virtue of its admission to the Union by the Act of April 8, 1812, 2 Stat. 701, on an equal footing with the original states, the State of Louisiana be-

came vested with and now holds fee simple title to all lands under all navigable waters within its territorial limits.

As a *Second Affirmative Defense,* Louisiana presents what appears to be an allegation of adverse possession with respect to the lands, minerals and other things underlying the Gulf of Mexico within the area described in the Complaint.

There is nothing in the Answer filed by Louisiana which suggests any dispute between the parties as to the facts which are requisite to a determination of the basic issues in this case and which are not subject to judicial notice. Indeed, the admissions made by the State in its Second Defense bring the litigation squarely within the framework of the similar case of *United States* v. *California,* at the time this Court rendered its opinion of June 23, 1947 (332 U. S. 19), and its decree of October 27, 1947 (332 U. S. 804). The controversy here, like that in the *California* case, involves "several thousand square miles of land under the ocean" and "the conflicting claims of federal and state officials as to which government, state or federal has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land * * *" (332 U. S. 24–25).

In the Complaint herein, the United States has asserted its rights with respect to the lands and minerals underlying the Gulf of Mexico ad-

jacent to Louisiana and has alleged that the State and its lessees have been and are trespassing upon the area in violation of the rights of the United States. The State, in its Answer, has admitted the activities described in the Complaint, but has alleged that such activities are not in violation of the rights of the United States. This presents a question of law which may be decided by the Court on the basis of the pleadings.

Louisiana has also presented to the Court a motion for trial by jury, suggesting that this suit is an action at law and that the State, as the representative of its citizens, is entitled to a trial by jury as provided in the Seventh Amendment to the Constitution and in 28 U. S. C., sec. 1872. This motion by the State is clearly without merit and should be summarily denied. There are other reasons why Louisiana is not entitled to such a trial in a proceeding of this character, but it is sufficient to point out that this suit and the relief sought herein are equitable in nature. The Seventh Amendment applies by its terms only to "Suits at common law."

As above indicated, the Answer filed by Louisiana presents no conflict as to the relevant facts in this controversy and, in our opinion, no legal question which was not decided adversely to the State's position in the decision of the Court in *United States* v. *California*, 332 U. S. 19. In the

circumstances, therefore, we suggest that the Court may appropriately enter judgment forthwith on the pleadings; otherwise, the case should be set for argument on the Motion for Judgment hereto annexed.

Respectfully submitted,

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1949.

U. S. GOVERNMENT PRINTING OFFICE 1949